

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARK SULLIVAN, :
Plaintiff, : **CASE NO. 2:23-CV-03174**
v. : **JUDGE MICHAEL H. WATSON**
THE OHIO STATE UNIVERSITY, *et al.* : **MAGISTRATE JUDGE
KIMBERLY A. JOLSON**
: **Defendants.**

NON-WAIVER OF PRIVILEGE OR CLAWBACK AGREEMENT AND ORDER

Plaintiff Mark Sullivan and Defendants, The Ohio State University, Anil Makhija, Robert Lount, Jennifer McLendon, Bennett Tepper, and William Watercutter (collectively, “Parties”), hereby agree and stipulate as follows:

The Parties are in the discovery phase of the above-captioned litigation. As such, the Parties will be producing various types of information including electronically stored information (“ESI”). As a result, there is a risk of inadvertent disclosure of certain privileged and/or otherwise protected personnel/personal/health information. Accordingly, and pursuant to Fed. R. Civ. P. 26(b)(5)(B), the Parties agree to this non-waiver or “clawback” agreement. The Parties hereby adopt by reference the definitions of “attorney-client privilege” and “work-product protection” as set forth in Fed. R. Evid. 502.

The Parties agree that the inadvertent production of any privileged or otherwise protected ESI or documents shall not be deemed a waiver or impairment of any claim of privilege or

protection including but not limited to the attorney-client privilege or work product doctrine immunity. "Inadvertent" shall be defined as the production of ESI or document(s) that could have been withheld or redacted under a good faith basis to assert a claim of privilege or protection. For this agreement to apply, the producing party must notify the receiving party within five (5) business days of realization of the inadvertent nature of the production. Upon notification from the producing party, the receiving party shall retrieve and return any such material, and the receiving party or its counsel shall not use such information for any purpose until further order of the Court. The Parties agree to this obligation regardless of the circumstances of the inadvertent disclosure, including whether or not any such inadvertent disclosure was made recklessly or negligently. Any analyses, memoranda or notes which were generated based upon such inadvertently produced information shall be treated strictly confidential and shall not be used for any purpose unless as agreed upon by the Parties or as directed by the Court. The producing party must also preserve the information until any dispute regarding the ESI or document is resolved.

IT IS HEREBY ORDERED.

Dated: _____

UNITED STATES MAGISTRATE JUDGE

WE, THE PARTIES, SO STIPULATE and agree to abide by the terms of this Order:

Respectfully submitted,

DAVE YOST (0056290)
Ohio Attorney General

*/s/ Daniel P. Petrov (per email consent
12/29/2023)*

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CERTIFICATE OF SERVICE

This will certify that the foregoing *Non-Waiver of Privilege or Clawback Agreement and Order* was filed electronically on December 29, 2023. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ In Son J. Loving

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